

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

08 CV 03017

ERIC BEAN,

Plaintiff,

against

ANTHONY NAK, INC., DAVID N. ARMSTRONG
and ANTHONY CAMARGO,

Defendants.

ECF CASE
JUDGE JES
COMPLAINT



Plaintiff, Eric Bean ("Bean"), by his attorneys Cowan, DeBaets, Abrahams, & Sheppard, LLP, for his complaint against defendants, Anthony Nak, Inc. ("Anthony Nak"), David N. Armstrong ("Armstrong"), and Anthony Camargo ("Camargo") (collectively, "Defendants"), alleges as follows:

NATURE OF THE ACTION

1. Plaintiff, a professional photographer, brings this action for copyright infringement against Defendants Anthony Nak, a corporation and Camargo and Armstrong, individuals, based on their unauthorized use of his copyright protected images in a promotional web video featured on their website. Prior to the unauthorized posting, plaintiff and defendants had a valid license agreement specifying the terms of use of the images in the video. Defendants, without plaintiff's permission and without negotiating a license fee, re-posted the video on their website after expiration of the license agreement. Plaintiff made numerous good faith efforts to contact defendants and negotiate a licensing fee, but Defendants consistently failed to negotiate, thus compelling Plaintiff to bring the present action.

JURISDICTION AND VENUE

2. This claim arises under the provisions of the Copyright Act of the United States, as amended, 17 U.S.C. § 1 *et seq.*, and is for infringement of a copyright registered in the Copyright Office of the United States.

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a), and personal jurisdiction over defendants pursuant to N.Y. CPLR § 302 *et seq.*

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) in that a substantial part of the events or omissions giving rise to the claim occurred in this district.

PARTIES

5. Plaintiff is a professional photographer currently residing at 42 Towpath Road, Accord, New York, 12404. At all relevant times, Plaintiff resided at 233 East 14th St., Loft #2, New York, NY 10003 and was doing business in this judicial district.

6. Defendant Anthony Nak Inc. is and at all relevant times was a corporation duly existing under the laws of Texas with its principal office or place of business at 800 Brazos Street, Suite 300, Austin, TX 78701. At all relevant times, Anthony Nak was engaged in the business of creating, marketing, and selling fine jewelry. This jewelry is sold in retail stores throughout the United States, including this district. In addition, Anthony Nak maintains an e-commerce website for the purpose of advertising and selling its products at www.anthonynak.com.

7. Upon information and belief, defendant David N. Armstrong was at all relevant times the President and creative director of Anthony Nak and resides in Austin, Texas with a business address at 800 Brazos Street, Suite 300, Austin, TX 78701.

8. Upon information and belief, defendant Anthony Camargo was at all relevant times the Vice-President and creative director of Anthony Nak and resides in Austin, Texas with a business address at 800 Brazos Street, Suite 300, Austin, TX 78701.

PERSONAL LIABILITY OF DEFENDANTS

9. Defendant David N. Armstrong, as officer, director and/or principal shareholder of defendant Anthony Nak, is individually liable for the infringing activities described herein.

10. Upon information and belief, at all relevant times defendant David N. Armstrong personally participated in and/or had the ability and right to supervise, direct, and control the infringing activities alleged in this Complaint.

11. Upon information and belief, defendant David N. Armstrong derived financial benefits from the infringing activities.

12. Defendant Anthony Carmago, as officer, director and/or principal shareholder of defendant Anthony Nak, is individually liable for the infringing activities described herein.

13. Upon information and belief, at all relevant times defendant Anthony Carmago personally participated in and/or had the ability and right to supervise, direct, and control the infringing activities alleged in this Complaint.

14. Upon information and belief, defendant Anthony Carmago derived financial benefits from the infringing activities.

FACTS

15. In approximately February 2003, Defendants retained Plaintiff's professional photography services on a freelance basis to conduct a photo shoot for the purpose of generating photographs for possible use in their public relations and advertising campaign for their jewelry line.

16. Plaintiff created approximately 500 images, some of which were to be included in a web video (the "Video") for use on defendants website www.anthonynak.com (the "Website").

17. Plaintiff prepared an invoice which detailed the fee for his photography services and the license terms, which included the specific uses and duration of time, for which the photographs could be used. As a professional courtesy, plaintiff charged defendants a discounted rate of \$7,500. The invoice states: "Website/Promotion usage for one year starting 3/25/03". The invoice is annexed hereto as Exhibit A.

18. Defendants paid Plaintiff the \$7,500 fee in the invoice, thus agreeing to the terms.

19. Upon information and belief, Defendants engaged the services of a production company for the purpose of creating the Video that would incorporate Plaintiff's licensed photographs. The Video which featured over 70 of the photographs from the shoot, was approximately 7:49 minutes long. The Video was posted on the Website in March 2003.

20. In approximately July 2003, Plaintiff's photography services were again retained by Defendants. At that session, Plaintiff created approximately 750 images, several of which were incorporated via license agreement into the already existing Video that was featured on the Website. Again, Plaintiff issued an invoice that detailed the duration and fee for use. Defendants paid that invoice.

21. In 2004 Plaintiff authored a book entitled The Complete Guide for Models (the "Book"). The Book contained many of Plaintiff's photographs, five (5) of which were featured prominently in the Video (the "Images"). Screen shots from the Video and the corresponding pages from the Book showing the Images are annexed as Exhibit B.

22. Plaintiff holds a valid copyright registration to the Images in the Book, Registration No. VA0001292337. A copy of this registration is annexed as Exhibit C.

23. On or about November 2007, Plaintiff discovered that Defendants were continuing to display the Video containing plaintiff's Images on the Website. In addition to the Video, the website also provided a link to a promotional news video that featured several Plaintiff's photographs.

24. Defendants infringed Plaintiff's copyrights in the Images by continuing to use the Images on the Website after March 25, 2004 when the license expired.

25. Plaintiff notified Defendants that their continued use of the Video on the Website violated Plaintiff's exclusive rights as copyright owner pursuant to 17 U.S.C §106 in the Images, and gave Defendants an opportunity to enter into a retroactive licensing agreement or make payment for defendants' past unauthorized use prior to instituting the present action. Despite Plaintiff's repeated requests for payment, defendants refused to rectify the infringing conduct.

COUNT I
(Infringement of Copyright – Copyright Act, 17 U.S.C. § 501 *et seq.*)

26. Plaintiff repeats each allegation contained in paragraphs 1 through 25 of this Complaint.

27. Defendants have infringed Plaintiff's copyright in the above registered work by posting on their website unauthorized copies of the Images.

28. Defendants' conduct constitutes copyright infringement under the Copyright Act of 1976, 17 U.S.C §501.

29. Plaintiff is entitled to recover damages, which include its actual losses and any and all profits defendants have made as a result of their wrongful conduct. 17 U.S.C. § 504.

30. As a result of the copyright infringement described above, Plaintiff is entitled to relief, including, but not limited to, injunctive relief, actual or statutory damages, statutory costs and attorneys fees and prejudgment interest.

31. Furthermore, Plaintiff is entitled to recover of its full costs, including reasonable attorneys fees pursuant to 17 U.S.C. § 505.

WHEREFORE, Plaintiff prays that this Court:

A. Preliminarily and permanently enjoin defendants, its officers, directors, principals, agents, servants, employees, successors and assigns from:

(a) copying, or making any unauthorized use of the Images, in any form, including but not limited to print or electronic.

(b) manufacturing, producing, distributing, circulating, selling, offering for sale, advertising, promoting or displaying any promotional material bearing any simulation, reproduction, counterfeit, or copy of the Images.

(c) using any simulation, reproduction, counterfeit, or copy of the Images, in connection with the promotion, advertisement, display, sale, offering for sale, manufacture, production, circulation or distribution of any product or service of defendants.

B. Direct defendants to deliver for destruction all products, magazines, signs, prints, packages, dies, wrappers, receptacles, digital files and advertisements in its possession or under their control, bearing the Images, or any simulation, reproduction, counterfeit, or copy, and all plates, molds, matrices and other means of making the same.

C. Direct defendants to account for and relinquish to Plaintiff all gains, profits, and advantages derived by defendants through defendants' infringement of Plaintiff's copyrights.

D. Direct defendants to pay to Plaintiff such damages, including statutory damages as Plaintiff is entitled to as a consequence of defendants' infringement of Plaintiff's copyrights in its Images.

E. Award to Plaintiff the costs of this action together with reasonable attorney's fees.

F. Award to Plaintiff prejudgment interest on the amount of the award to Plaintiff, and;

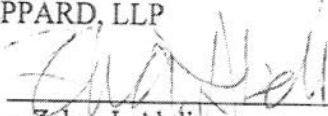
G. Award to Plaintiff such other and further relief as the Court may deem just and proper.

Dated: New York, New York
March 24, 2008

Respectfully Submitted,

COWAN, DEBAETS, ABRAHAM, &
SHEPPARD, LLP

By:


Zehra J. Abdi

Nancy E. Wolff

41 Madison Avenue

New York, New York 10010

(212) 974-7474

ATTORNEYS FOR PLAINTIFF

ERIC BEAN

Exhibit A

ERIC BEAN

PHOTOGRAPHER

233 East 14th Street, Loft #2
New York NY 10003
(212) 995-0331

INVOICE

Client: Anthony Nak

Date: 3/25/03

Description:
Jewelry Campaign

Photography fee:	\$7,500.00
One day shoot	
Website/Promotion usage, for one year, starting 3/25/03	

Approximate Expenses:

make-up/hair	\$800
film, processing	\$800
assistant/props/misc	\$700
model (special price)	\$1,800

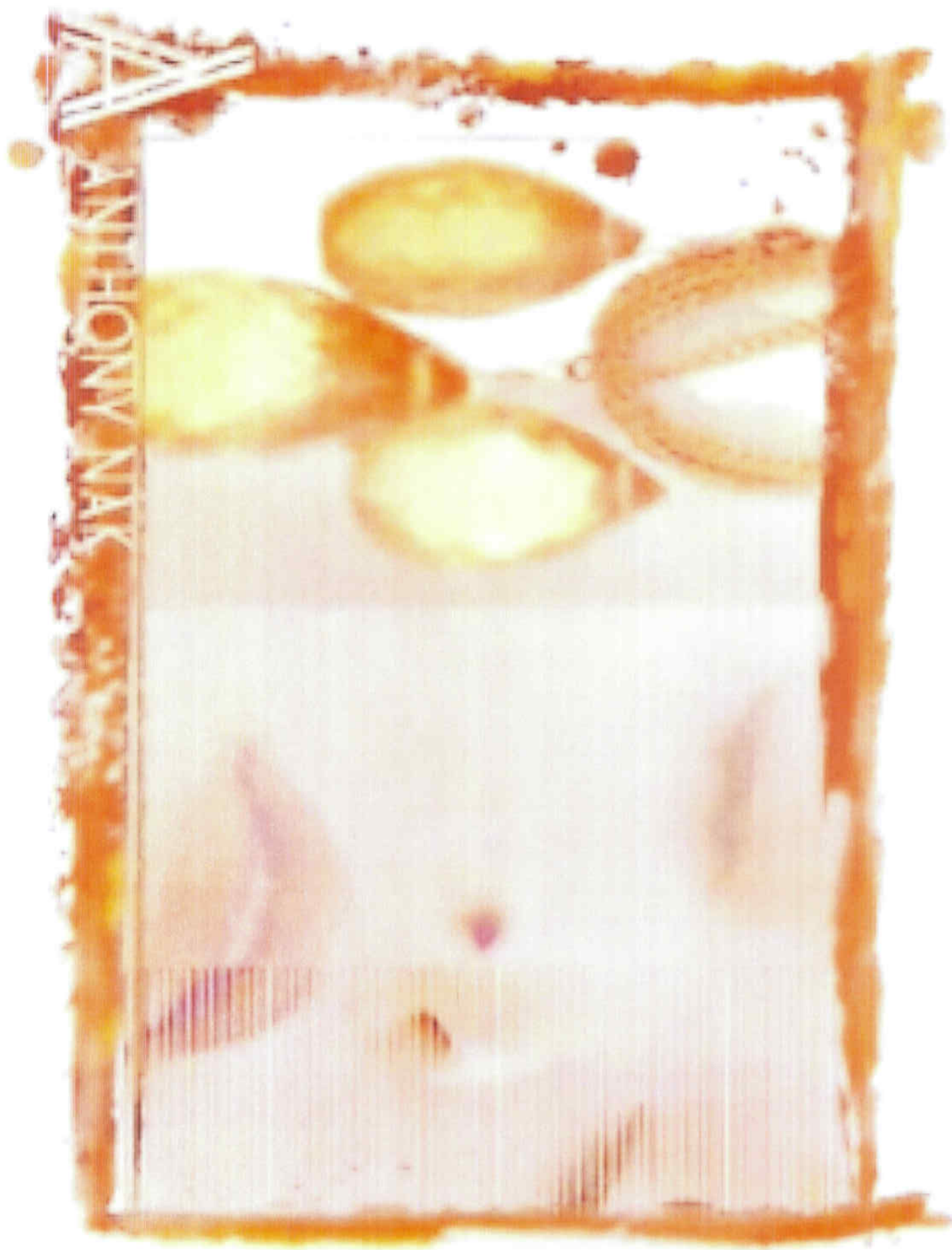
****Special Discounted Price****

Total : \$10,000.00

Deposit: 1/4 budget	-\$2500.00
Model fee (paid)	-\$1800.00
 TOTAL DUE:	 \$5700.00

Exhibit B





five signs of professional

1. **Good Manners:** Saying "good morning" and "thank you" go a long way. Basic pleasantries are sometimes forgotten if you get too nervous.

2. **Timeliness:** If you are late to a casting, the client will worry that you may be late to the actual photo shoot as well.

3. **Preparedness:** Your portfolio should be up-to-date when you go to castings. And you should be prepared for the type of job you were hired for. This includes being well-rested and arriving ready to work.

4. **Attitude:** Willingness to work, excitement, and a good positive outlook are an extremely important aspect of professionalism. No checking your watch or complaining if the hour gets late.

5. **Follow-up:** Businessmen and job-hunters know the importance of thank you notes—modeling is no different. They could have used any one of a hundred models for the job, but they chose you.

money matters

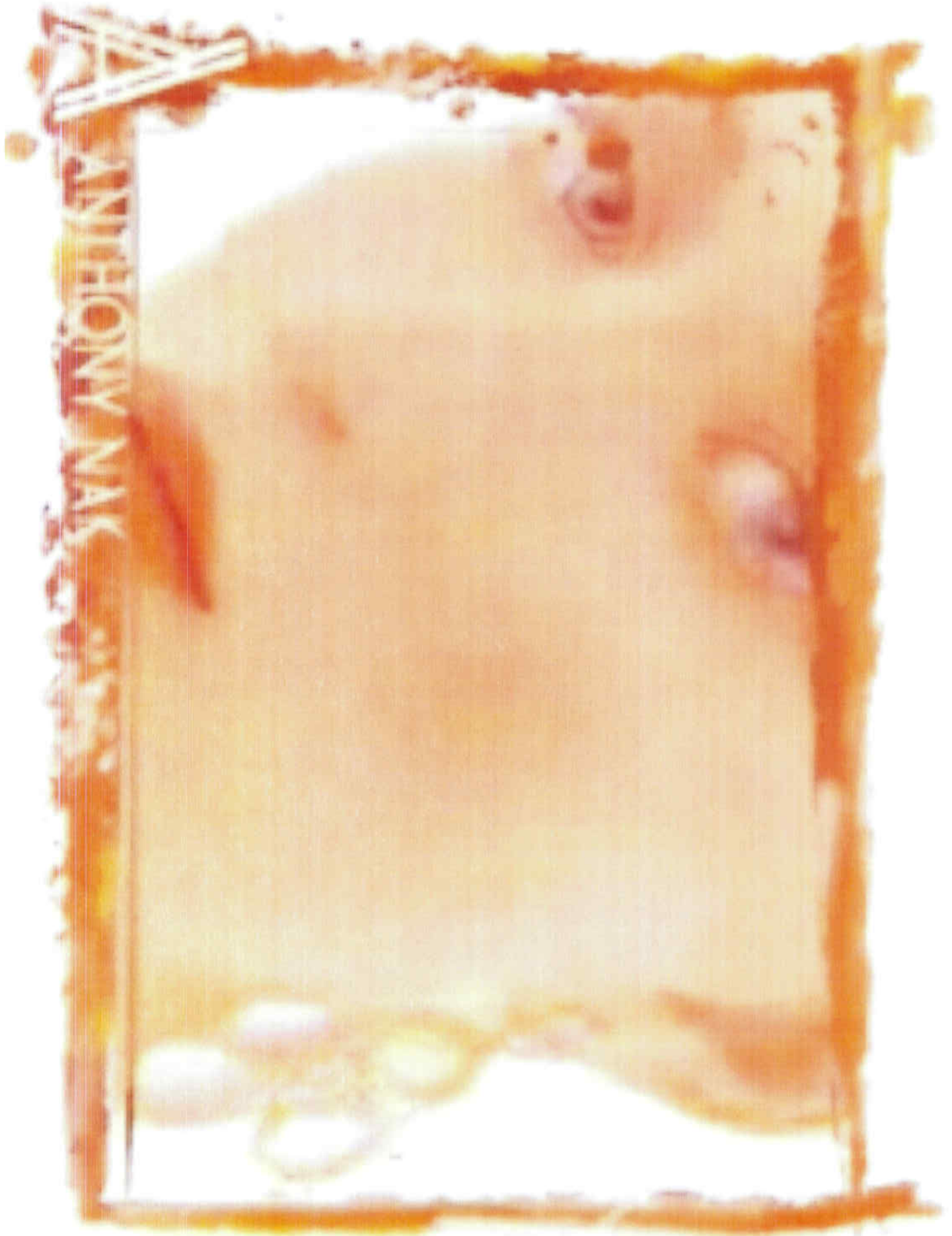
"Learn to count early, don't spend what you don't have, and never let anyone — even your parents — totally take over your finances."



As a model, you'll need a good sense of money matters before you enter the business. Most of the time, you'll be working on a per diem basis, meaning you'll be paid for each day you work. You'll also need to understand the difference between a flat fee and a per diem rate. A flat fee is a set amount of money you'll receive for a specific job, while a per diem rate is a daily rate you'll receive for each day you work.

It's also important to understand the difference between a gross rate and a net rate. A gross rate is the total amount of money you'll receive before taxes, while a net rate is the amount you'll receive after taxes. It's important to know the difference between these two rates, as they can make a big difference in your take-home pay.

Modeling isn't just about posing for photos. It's also about understanding the business side of the industry. You'll need to know how to negotiate your rates, how to handle contracts, and how to manage your finances. It's a complex world, but with the right knowledge and skills, you can succeed.







The types of poses also differ based on the lighting, backdrop, makeup, and clothing itself. It will often be up to you to bring it all together, so be aware of how these things all interact.

practicing poses

Learning to pose well is time-consuming. Determining when to use certain poses takes practice. When inexperienced models "strike a pose" that they've seen in a magazine, it can be laughable if it is in an inappropriate setting.

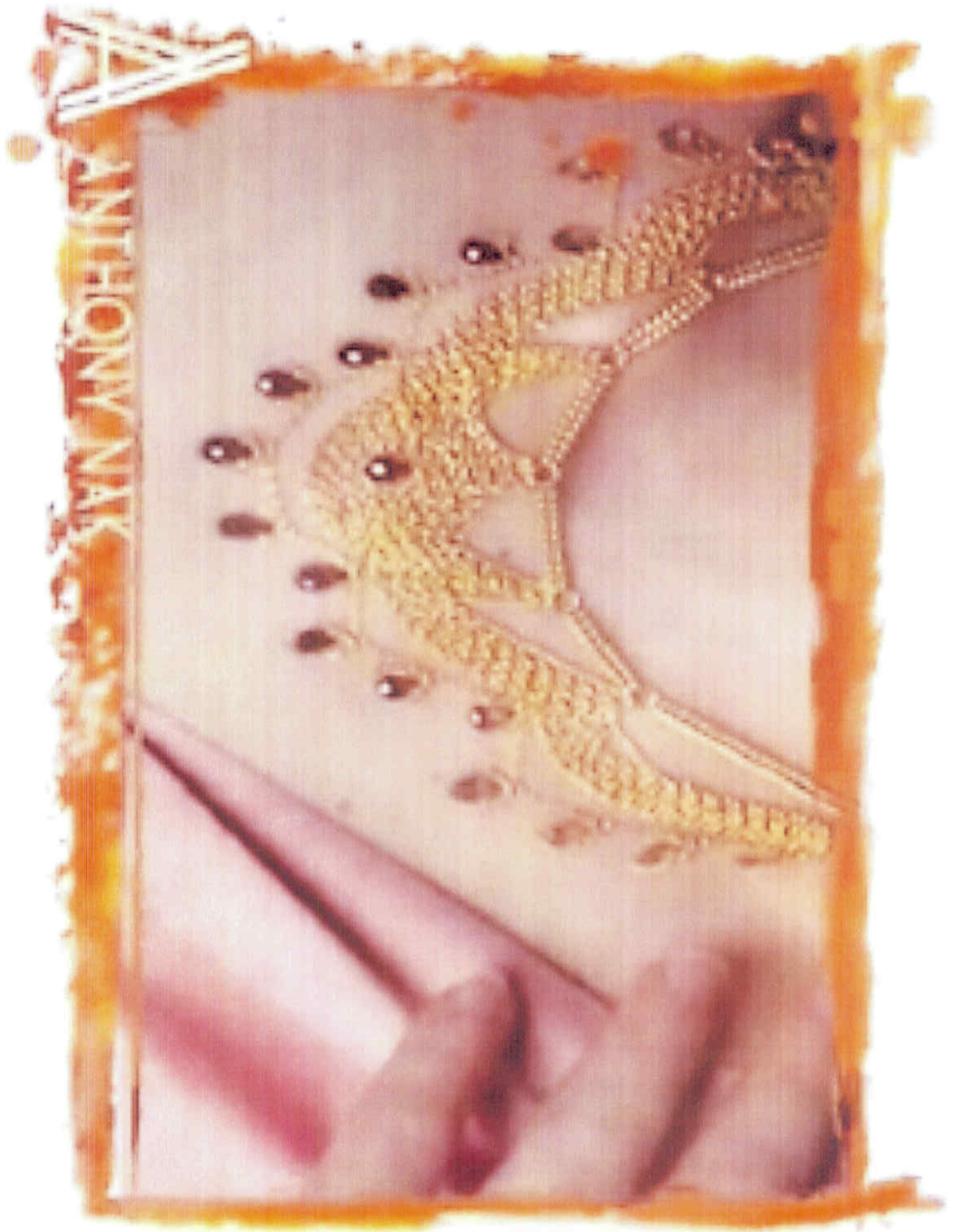
"A new kid just testing the waters is going to be nervous and not know what to expect on a photo shoot," explains Michael Lange, Nikon Worldwide.

Not only does she or he lack confidence, but they also have fewer set poses to draw inspiration from, so sometime they stand there and freeze. When in doubt, ask the photographer. It's always okay to suggest, "How about this or that?"

It is important that the model take an inventory of his or her body before the photographer starts shooting. Where are m-

When taking the powder, spots, to different poses, the model should pose as if the camera is not there. The model should be aware of how these things all interact.









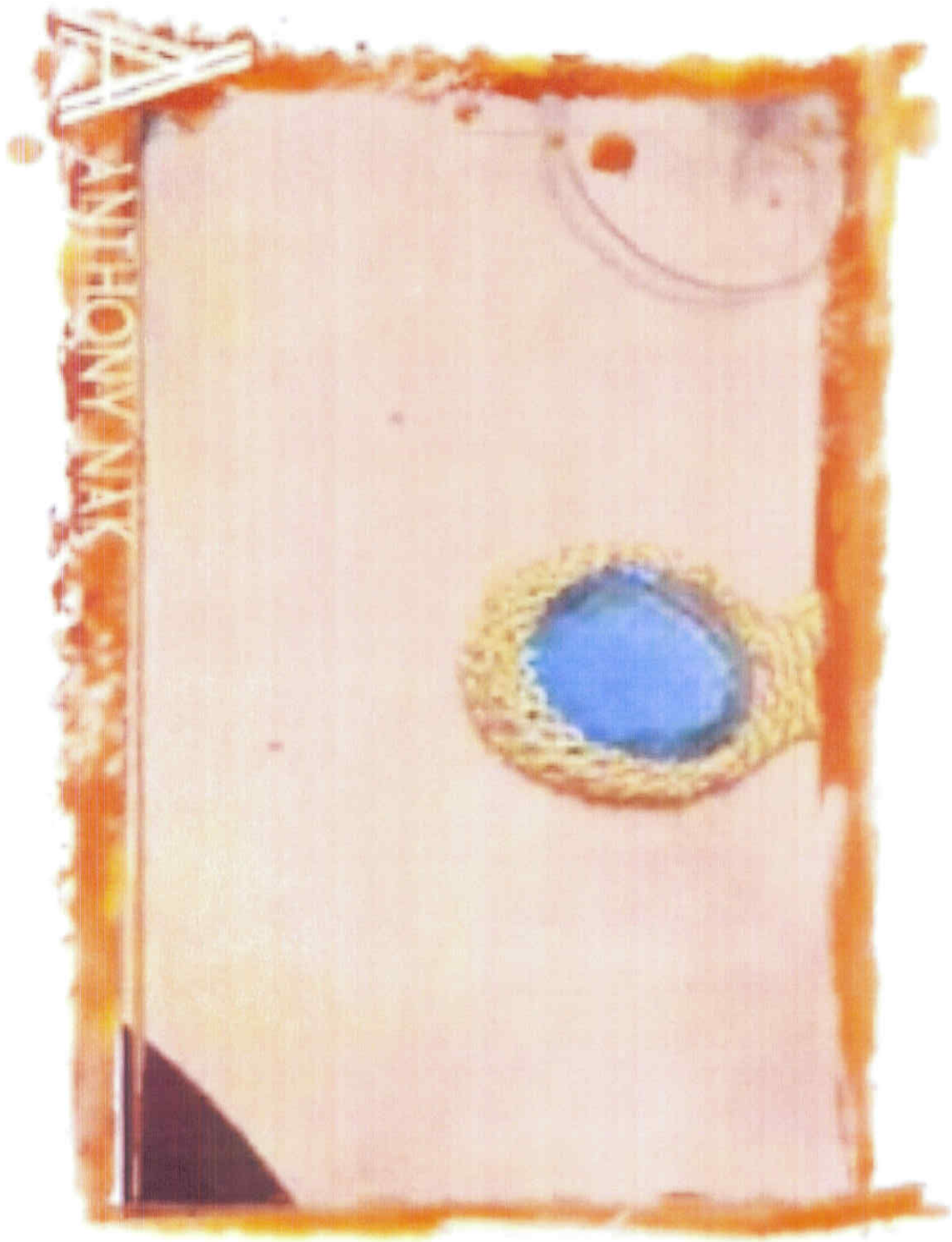


computer guide for models

getting started in modeling

4

Don't get started in modeling until you're 18.





not acceptable in any way, shape or form," says David Buckley. "I only heard of two or three models using cocaine in my era, and they were probably doing drugs of some sort before they were models."

"If you walk into any big corporation, like *Sevens*, there will be people who are alcoholics, or who use drugs and have a problem with it," explains David Griff. "If you walk into McDonalds there will also be people who are alcoholics or who use drugs and have a problem with it. But they don't have cameras, reporters, and fashion magazines hanging over them and following them around looking for a story to sell. Models do, so you hear about it more," adds David.

"The working model gets up in the morning and is on set by 7 or 8 o'clock, works all day, leaves the set, goes to the

gym for a few hours, goes home, goes to bed, gets up the next day, gets on a flight to Paris, gets off and goes directly to a booking, works three days, gets on a flight back to New York— I can't imagine that someone could have a drug or alcohol abuse problem, do all that, and *still* look good!" explains David.

"That's not to say that there aren't models in the industry who have a drug problem," warns David. "Out of 55 models on my board, I only had one with a drug problem, and I'm pretty sure she had it before she came to New York."

"The second we realized it, we sent her home and are working with her parents to get her help. Hopefully, one day, she'll be healthy enough physically and mentally to come back to work. Until then, she's out of the industry."

below:
Models must look healthy and there is no way around it. Good skin and nails can make this beautiful if she abuses drugs or alcohol.



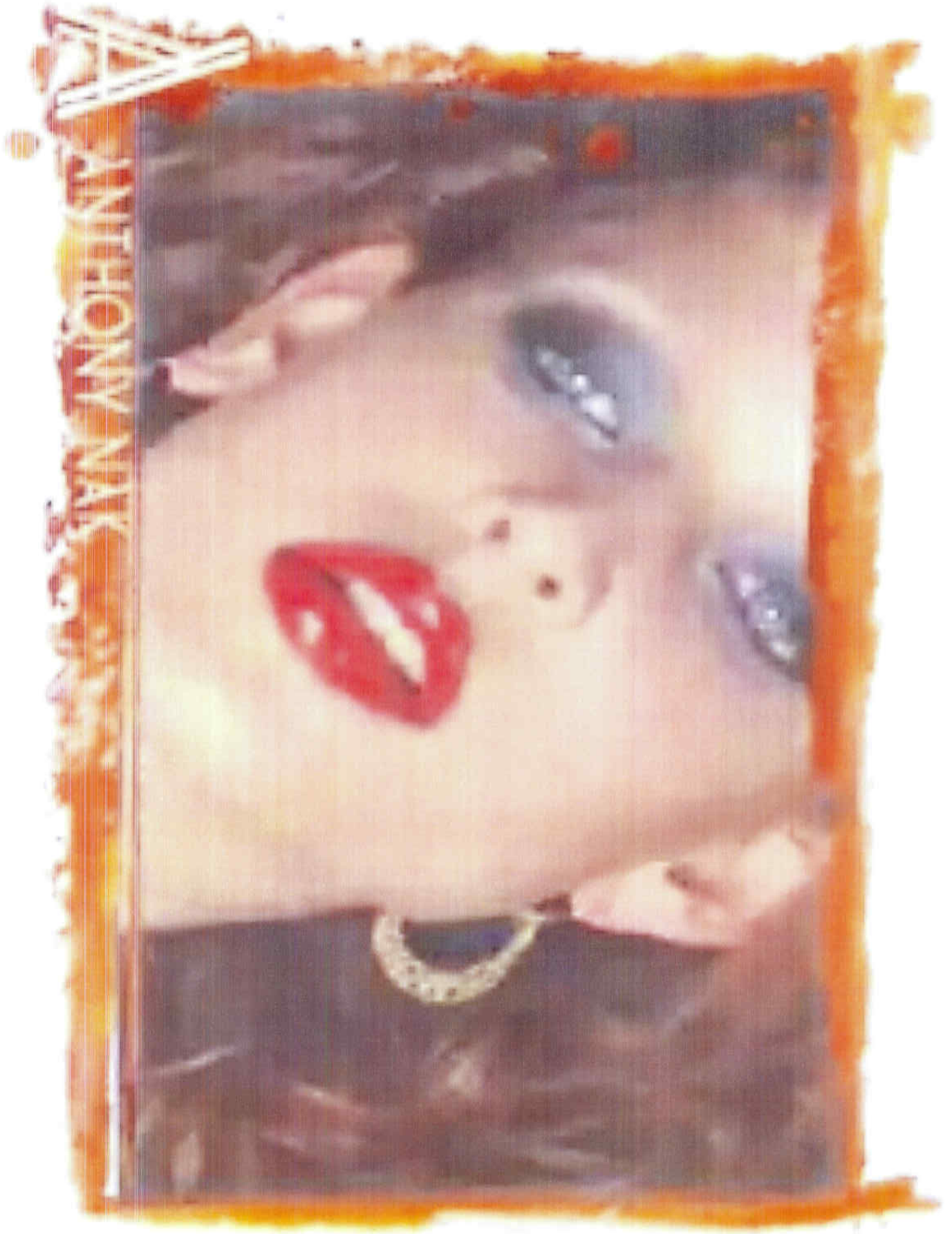




Exhibit C

FEE CH/

Fees are
that date
at www
3000 for



After
b:site
707-

FORM VA

For a Work of the Visual Arts
UNITED STATES COPYRIGHT OFFICE

VA 1-292-337



EXCLUSIVE WORK OF FEDERAL EMPLOYER

DEC 23 2004

Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1

TITLE OF THIS WORK

THE COMPLETE GUIDE FOR MODELS

NATURE OF THIS WORK See instructions

Photographs/illustrations

PREVIOUS OR ALTERNATIVE TITLES

Publication as a Contribution: If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work

If published in a periodical or serial give: Volume

Number

Issue Date

On Page

2

NOTE

Under the law, the "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in this space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

NAME OF AUTHOR

Eric Bean

DATES OF BIRTH AND DEATH

Year Born

Year Died

Was this contribution to the work a "work made for hire"?

Yes

No

Author's Nationality or Domestic

Name of Country

OR: Citizen of: USA

Domiciled in: USA

Was This Author's Contribution to the Work

Anonymous?

Yes

No

Pseudonymous?

Yes

No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Check appropriate box(es). See instructions

3-Dimensional sculpture

Map

Technical drawing

2-Dimensional artwork

Photograph

Text

Reproduction of work of art

Jewelry design

Architectural work

Illustrations

NAME OF AUTHOR

DATES OF BIRTH AND DEATH

Year Born

Year Died

Was this contribution to the work a "work made for hire"?

Yes

No

Author's Nationality or Domestic

Name of Country

OR: Citizen of: USA

Domiciled in: USA

Was This Author's Contribution to the Work

Anonymous?

Yes

No

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Yes

No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Check appropriate box(es). See instructions

3-Dimensional sculpture

Map

Technical drawing

2-Dimensional artwork

Photograph

Text

Reproduction of work of art

Jewelry design

Architectural work

3

Year in Which Creation of This Work Was

Completed

2004

This information must be given in all cases.

Date and Medium of First Publication of This Particular Work

Complete this information ONLY if this work has been published.

Month

Oct.

Day

1

Year

2004

4

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2.

Eric Bean c/o
Lark Books
67 Broadway
Asheville, NC 28801

Transfer: If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright.

APPLICATION RECEIVED

DEC 23 2004

ONE DEPOSIT RECEIVED

TWO DEPOSITS RECEIVED

DEC 23 2004

FUNDS RECEIVED

MORE ON BACK

• Complete all applicable spaces (numbers 5-9) on the reverse side of this page.
• See detailed instructions.
• Sign the form at line 6.

DO NOT WRITE HERE

Page 1 of 2

EXAMINED BY Jfb FORM V

CHECKED BY

☐ CORRESPONDENCE
YesFOR
COPYING
OFFICE
USE
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION The registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

- ☐ Yes ☒ No If your answer is "Yes," why is another registration being sought? (Check appropriate box.)
- a. ☐ This is the first published edition of a work previously registered in unpublished form.
- b. ☐ This is the first application submitted by this author as copyright claimant.
- c. ☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give Previous Registration Number

Year of Registration

DERIVATIVE WORK OR COMPILATION Complete both space 5a and 5b for a derivative work; complete only 5b for a compilation.

a. Promoting Material Identify any promoting work or works that this work is based on or incorporates.

Some photos not by, nor claimed for author.

b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed.

All other photos.

DEPOSIT ACCOUNT If this registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name

Account Number

CORRESPONDENCE Give name and address to which correspondence about this application should be sent.

Patricia Wald

Lark Books

67 Broadway

Asheville, NC 28801

Area code and daytime telephone number 828 253 0467

Email

Fax number 828 253 7952

CERTIFICATION I, the undersigned, hereby certify that I am the

check only one

☒ author☐ other copyright claimant☐ owner of exclusive right(s)☐ authorized agent of photographer/illustrator/publisher

Name of author or other copyright claimant, or owner of exclusive right(s)

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date If this application gives a date of publication in space 3, do not sign and submit it before that date.

Patricia Wald

Handwritten signature

Date Oct. 11, 2004

Certificate
will be
mailed in
window
envelope
to this
address:

Name Patricia Wald

Number/Street/Apt

Lark Books

City/State/ZIP

67 Broadway

Asheville, NC 28801

• Complete all necessary spaces

• Sign your application in space 8

1. Application fees

2. Nonrefundable filing fee in check or money

order payable to Register of Copyrights

3. Deposit material

Library of Congress

Copyright Office

101 Independence Avenue, S.E.

Washington, D.C. 20540-4000

As of July 1, 2003,
the filing fee for
Patent VA is \$50.

17 U.S.C. 154(d): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 408, or in any written statement filed in connection with this application, shall be fined not more than \$2,500.

May 2000—100,000
WEB REV: May 2002

PRINTED ON RECYCLED PAPER

U.S. GOVERNMENT PRINTING OFFICE: 2000-461-113/720

Exhibit D



Franchise Administration

May 30, 2006

VIA 2-DAY UPS

Mr. P.K. Patel
1328 Jake Alexander Boulevard, S
Salisbury, NC 28146

**Re: Termination of Ramada System Unit 02226-81896-1
Located in Thomasville, North Carolina ("Facility")**

Dear Mr. Patel:

I serve as Settlement Manager for Ramada Worldwide Inc. ("we", "us" "our"). As you are aware, the June 24, 1992 license agreement ("Agreement") between Y&Y, Inc. ("you" or "your") and us for the operation of the Facility referenced above as a Ramada guest lodging facility was terminated on or about March 31, 2005 because you flipped the Facility to a non-Cendant brand.

The termination of the Agreement requires you to fulfill certain post termination obligations, including complete de-identification of the Facility and payment of all outstanding royalties and liquidated damages.

Accordingly, we request payment of \$104,000.00 in liquidated damages as a result of the premature termination of the Agreement as well as \$3,745.57 in outstanding recurring fees and other charges on or before **June 9, 2006**. We are offering you an opportunity to resolve this dispute without resorting to litigation. However, if you do not contact me to resolve this matter before **June 9, 2006**, we will have no other choice but to refer this matter to our outside litigation counsel.

I urge you to take this opportunity to resolve this matter now, before the parties are forced to spend time and money pursuing a matter that could have been resolved amicably. Please contact me directly at 973-496-5662 or by fax at 973-496-2797.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Randi Siouffi".

Randi Siouffi
Settlement Manager

RS/jm

cc: K.C. Patel
Kiron Patel
Dilip Patel

Mr. P.K. Patel
May 30, 2006
Page 2

bcc: Marc Merriweather
Green File